



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

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6OEJ...6RC...*copy*.....
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P.O. Box 149347
Austin, Texas 78714-9347
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December 19, 2008

Case No. 1410090254

Mr. Richard Green, Administrator
U.S. EPA, Region 6
1445 Ross Avenue, MC 6RA
Dallas, Texas 75202-2733

**RE: Notice of Alleged Violation
Proposed Administrative Penalty Against: United States Environmental Protection
Agency, Region 6**

Helena Chemical Plant
602 North Holland Avenue
Mission, Texas



Dear Mr. Greene:

On February 14, 2008, a representative from the Department of State Health Services, Division for Regulatory Services (department) conducted an asbestos inspection at the Helena Chemical Plant located at 602 North Holland Avenue, Mission, Texas. The purpose of the inspection was to determine the project's compliance with the Texas Asbestos Health Protection Act, Occupations Code, Chapter 1954 ("Act") the Texas Asbestos Health Protection Rules (Rules), Title 25 TAC, Part 1, Chapter 295, and the National Emission Standards for Hazardous Air Pollutants (NESHAP).

The department is authorized to enforce the Act and the Texas Asbestos Health Protection Rules (Rules), [Title 25 Part 1, Chapter 295, Subchapter C of the Texas Administrative Code (TAC)], and the NESHAP, 40 CFR, Part 61, Subpart M. Copies of the Act and Rules are available for your review at any of our regional offices. A copy of NESHAP can be found in the Federal Register.

As a result of this inspection and subsequent review of department files, this is to notify you that the following alleged violation(s) of TAC and/or NESHAP occurred during the project.

ALLEGED VIOLATION 1 -

**FAILURE TO CONDUCT A THOROUGH
ASBESTOS INSPECTION
40 CFR PART 61, SUBPART M, §61.145(a)**

Section 61.145(a) states: "...prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos,..."

At the time of the February 14, 2008 inspection, demolition activities were in progress. The United States Environmental Protection Agency, Region 6 was determined to be the operator of the demolition project. An inspection for the presence of asbestos was not conducted by an appropriately accredited individual prior to the start of the demolition activities as is required by the NESHAP rules.

Proposed Penalty: In accordance with 25 TAC §295.70, the proposed penalty is a Critical Violation, Severity Level I, First Occurrence - \$5,000.00

ALLEGED VIOLATION 2 -

**FAILURE TO PROVIDE NOTIFICATION OF
DEMOLITION
40 CFR PART 61, SUBPART M, §61.145(b)(1)**

Section 61.145(b) states: "Each owner or operator of a demolition or renovation activity to which this section applies shall: (1) Provide the Administrator with written notice of intention to demolish or renovate."

At the time of the February 14, 2008 inspection, demolition activities were in progress. The United States Environmental Protection Agency, Region 6 was determined to be the operator of the demolition project. An asbestos demolition notification was not submitted ten (10) working days prior to the start of the demolition activities as is required by the NESHAP rules.

Proposed Penalty: In accordance with 25 TAC §295.70, the proposed penalty is a Critical Violation, Severity Level I, First Occurrence - \$2,000.00

The proposed penalty for the alleged violation(s) is \$7,000.00. According to the Rules, the following three options are available:

1. The alleged violation is acknowledged and the proposed penalty is paid within thirty (30) calendar days of receipt of this letter to the DSHS, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347. Each check or money order must be made payable to the DSHS and must also include the notation: "Deposit in Account No. ZZ156-178, Case No. 1410090254. **See last page of letter.**"
2. An Informal Conference is requested within thirty (30) days of receipt of this letter. If this option is selected and an agreement is not reached at the conclusion of the conference, you may request a Formal Hearing. A written request must be sent within thirty (30) days from the conclusion of the informal conference to the Department of State Health Services, Mail Code 7927, P.O. Box 149347, Austin, Texas 78714-9347. If a Formal Hearing is not requested within the thirty (30) day period, this option is waived; or

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3. A Formal Hearing to contest this action is requested. In this case, a written request for such a hearing must be sent within thirty (30) days of receipt of this letter to the Department of State Health Services, Mail Code 7927, P.O. Box 149347, Austin, Texas 78714-9347. If a Formal Hearing is not requested within the thirty (30) day period, this option is waived.

Hearings are conducted in accordance with the provisions of the Administrative Procedures Act, Texas Government Code, Chapter 2001 and the department's formal hearing procedures in Title 25, Texas Administrative Code, Sections 1.21 through 1.34. If no response is received by the department by the thirtieth (30th) day, the Commissioner of State Health Services or his designee will issue a Default Order assessing the penalty.

Should you have any questions or wish to schedule an informal conference, please contact me at (512) 834-6665, Ext. 2482. If you would like to receive a copy of the case file, please send a written request to Ms. Christine Lay via electronic mail at christine.lay@dshs.state.tx.us.

Sincerely,



Roni S. Thompson, Enforcement Specialist
Enforcement Unit
Division for Regulatory Services

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If selecting option 1 please sign in the space indicated below and return this document and payment of the penalty to the DSHS, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

Respondent admits the allegations in the department's Notice Letter and accepts the action proposed. Respondent has elected to accept the penalty and agrees to the department's issuance of an Order finding that Respondent committed the violation(s) listed in the Notice Letter. Respondent waives the right to a hearing or an appeal regarding the department's findings, the proposed action and the department's disposition of this case through the department's issuance of an Order.

AGREED TO BY RESPONDENT:

Signature of Authorized Agent

Printed Name

Signature Date